



COUNCIL MINUTES

September 10, 2009

The City Council of the City of Mesa met in a Study Session in the lower level meeting room of the Council Chambers, 57 East 1st Street, on September 10, 2009 at 7:32 a.m.

COUNCIL PRESENT

Mayor Scott Smith
Alex Finter
Dina Higgins
Kyle Jones
Dennis Kavanaugh
Dave Richins
Scott Somers

COUNCIL ABSENT

None

OFFICERS PRESENT

Christopher Brady
Debbie Spinner
Linda Crocker

1. Review items on the agenda for the September 14, 2009 Regular Council Meeting.

All of the items on the agenda were reviewed among Council and staff and the following was noted:

Conflicts of interest declared: None

Items added to the consent agenda: None

Items removed from the consent agenda: None

2. Hear a presentation, discuss and provide direction on FY2009/2010 funding for the Community Development Block Grant (CDBG) Program.

Neighborhood Services Director Ray Villa introduced Housing and Revitalization Director Carolyn Olson, who displayed a PowerPoint presentation (**see Attachment 1**) to provide information regarding the second round of CDBG funding in the amount of \$266,795. She advised that staff was seeking Council direction regarding the fund allocation, and she referred to the chart titled, "2nd Round CDBG – Funding Summary" (see page 3 of Attachment 1). Ms. Olson reviewed the list of "public service" and "non-public service" applications, the amounts requested and staff's funding recommendations (see page 4 of Attachment 1).

In response to a request from Mayor Smith, Mr. Villa provided information regarding the Alston House, which is the "public facility" funding request received from the Martin Luther King Celebration Committee. He reported that although the City applied for and was awarded a \$100,000 grant from the State Heritage Fund for Alston House renovations, the State rescinded

the funding when the budget crisis occurred. Mr. Villa stated that the CDBG funding would enable work to progress, and he added that future CDBG funds may be allocated for the project.

City Manager Christopher Brady explained that the Alston House renovation has been ongoing for almost five years. He said that staff is recommending the CDBG fund allocation in order to keep the project moving forward.

Ms. Olson advised that the funding recommendation of \$65,973 would be utilized to address the exterior of the Alston House.

Responding to a question from Councilmember Finter, Economic Development Director Bill Jabjiniak advised that an allocation to Economic Development would fund a study regarding the feasibility of locating a health sciences center on Site 17 at the corner of Mesa and University Drives.

Mr. Brady responded to comments from Mayor Smith by confirming that in the past the City held discussions with health care providers regarding this property. He expressed the opinion that a feasibility study would identify the opportunities and the potential for a health care related development.

Ms. Olson stated that the public comment period begins on September 18th and a public hearing is scheduled for September 28th.

Councilmember Kavanaugh thanked staff for answering his questions regarding the proposed funding allocations, and he commended them for their evaluation of the funding requests. He also expressed support for allocating CDBG funds for economic development, although he was concerned that the funding for the Economic Development position was insufficient.

Councilmember Somers concurred with the comments of Councilmember Kavanaugh in that \$45,000 for the Economic Development position appears to be inadequate. He stated the opinion that although the Council and the Downtown Mesa Association have established a vision, an individual is needed who can create and utilize the tools necessary to move forward. He further stated the opinion that another feasibility study would not be necessary.

In response to comments from Mayor Smith, Mr. Brady confirmed that CDBG funds would not be utilized to hire a permanent employee. He said that the funding currently available would be utilized to retain the services of an experienced individual who can provide a third party assessment of Downtown Mesa. He added that staffing a permanent position would be addressed in the future when the economy has stabilized.

Discussion ensued relative to the fact that the funds must be utilized in a CDBG eligible area such as Downtown Mesa; that the assessment would focus on the development of a plan for a higher education component in the Downtown area; and that staff is attempting to maximize the funding that is available for Downtown Mesa.

Councilmember Somers suggested that the Council discuss the responsibilities of the future permanent position in Economic Development during their review of the Strategic Initiatives.

Responding to a series of questions from Councilmember Somers, Mr. Brady said that the decision to utilize CDBG funds for the Alston House was made in the context of honoring the City's earlier commitment to preserving a part of Mesa's history in a neighborhood that continues to experience challenges. He said that when the Alston House restoration is complete, the facility would be utilized by non-profit and community organizations for offices and meeting space. Mr. Brady added that the proposal to allocate CDBG funds was made when the State Heritage Fund grant was rescinded by the Legislature.

Councilmember Somers said that although he supported leveraging the CDBG funds, he expressed concern that other projects could be considered to have a higher Council priority in view of the limited funding available.

Councilmember Finter suggested that staff provide the Council with an overview of various projects, such as Escobedo, the Alston House, Site 17, etc.

Mayor Smith stated that the City owned property worth millions of dollars in downtown Mesa is under-utilized, which is an investment that the City needs to maximize. He explained that developing these properties would generate income to the City through the provision of utility services and that the increased economic activity would generate sales tax revenue.

Vice Mayor Jones stated the opinion that the City should follow through on commitments made to the non-profit organizations that contribute greatly to the community. He added that regardless of whether the commitment was made by a prior Council, the City's credibility would be damaged by a failure to follow through on these obligations.

It was moved by Councilmember Richins, seconded by Councilmember Kavanaugh, to direct staff to proceed with the 2009/2010 CDBG Annual Plan Amendment and to accept staff's recommendations regarding the funding levels and projects.

Carried unanimously.

Mayor Smith thanked staff for the presentation.

3. Hear a presentation, discuss and provide direction to the City Manager on an extension for the Waveyard Development Agreement.

Mayor Smith announced that agenda item 3 would be considered immediately following the Executive Session. (The discussion of item 3 follows agenda item 9 in this document.)

4. Hear a presentation, discuss and provide direction on Conditional Use Permits in the Zoning Code Update.

Zoning/Civil Hearing Administrator Gordon Sheffield displayed a PowerPoint presentation (**see Attachment 2**) and advised that the Council typically has considerable discretion in approving or denying a rezoning case, which is considered to be a legislative act. He stated that Conditional Use Permits, which are included in the Zoning Code Update, are subject to different rules. Mr. Sheffield explained that "by-right" uses describe land uses with predictable types of projects that are consistent with the purpose and intent of the zoning district and are usually

approved by the Planning Department without additional reviews. He added that “conditional” uses require additional reviews that can be delegated by the Council as listed below:

- Use Permit – review by staff, which has minimal discretion.
- Special Use Permit – review by the Board of Adjustment and the Zoning Administrator/Hearing Officer, which has some discretion.
- Council Use Permit – review by the Council, which has the greatest amount of discretion.

Mayor Smith noted that differences between C-1 and C-3 districts were that C-1 districts could have light retail and C-3 districts could have heavy industrial development.

Councilmember Somers requested that Mr. Sheffield provide an explanation of the differences between C-1, C-2 and C-3 zoning districts.

Mr. Sheffield noted that zoning ordinances segregate land uses into districts: residential, multiple residential (apartments and/or townhomes), commercial and industrial, all of which are divided into many categories. He said that residential includes R1-6 (6,000 square foot lots) and R1-15 (15,000 square foot lots). Mr. Sheffield added that commercial districts include OS (Office-Service without retail), C-1 (light neighborhood retail), C-2 (indoor retail/ uses), and C-3 (retail that includes outdoor displays such as auto and RV dealerships, garden centers, and shopping malls).

Mr. Sheffield provided an overview of Use Permits (see page 2 of Attachment 2), Special Use Permits (see page 3 of Attachment 2), and Council Use Permits (see pages 3 and 4 of Attachment 2).

In response to a question from Mayor Smith regarding Council Use Permits for schools, City Attorney Debbie Spinner advised that a new State Statute requires the City to consider charter schools in the same manner as public schools. She stated that Mesa presently requires all schools to obtain a Council Use Permit, which is a process that has been in place for many years. Ms. Spinner said that staff would review the process and render an opinion regarding the requirement to obtain a Council Use Permit, if that is the direction of the Council.

Mr. Sheffield noted that the Council Use Permit (CUP) for schools was put in place approximately ten years ago when the school system located Barbara Bush Elementary School in an industrial district. He advised that the City may impose additional conditions to create compatibility with the surrounding area for all three categories of Conditional Use Permits.

Responding to questions from Councilmember Richins, Ms. Spinner advised that granting a CUP has been determined to be an administrative act, which enables the Council to impose restrictions on a project, such as restricting the CUP to the current owner or user. She explained that the Council has complete discretion when the action is considered to be a legislative act, such as a rezoning decision. Ms. Spinner reported that staff is reviewing the process with regard to appeals in response to a Notice of Claim that was recently filed. She said that the Superior Court would determine if the Council had the authority to deny a Council Use Permit, and she stated the opinion that the Superior Court would defer to the Council’s decision unless the Court determined that the Council’s action was arbitrary or capricious.

Planning Director John Wesley advised that the current Zoning Update provides the opportunity to review and possibly change the standards for a CUP.

In response to a suggestion by Councilmember Richins that a background check be added as a condition, Ms. Spinner advised that staff would investigate that possibility. She added that the Council could impose other conditions such as prohibiting a CUP granted to an owner/operator to be transferred to a new owner without Council review or requiring that the permit be subject to a Council review on an annual basis.

Responding to comments by Councilmember Kavanaugh regarding background checks as being only one of several criteria utilized in the process, Ms. Spinner stated that the City conducts background checks on individuals applying for certain licenses.

Deputy City Attorney Donna Bronski advised that background checks are presently utilized for a licensure process rather than a land use process. She noted that when the Council considers a Use Permit, the determination has already been made that the particular use is appropriate in the district if certain additional criteria are met.

Mr. Sheffield responded to comments by Councilmember Somers by noting that the Council makes the determination with regard to the CUP as to what constitutes compatibility and what is not detrimental to the surrounding neighborhood, both of which impose a human judgment that relates to the Council's criteria as well as the Council's discretion.

Ms. Spinner noted that the City has established criteria. She added that staff has less discretion when considering a Use or Special Use Permit than the Council has when considering a CUP, and she added that any request for a permit could also be presented for Council consideration.

Mayor Smith said that the standards for a CUP could be more clearly defined to make the Council's decision more discretionary or less discretionary with the ultimate goal of raising the standards.

Mr. Sheffield suggested that the Council could establish certain criteria and delegate the decision making authority to staff, the Board of Adjustment or the Planning and Zoning Board with public review and then the Council could serve as an Appeals Board.

Further discussion ensued relative to the fact that the Council could define the policy for permits; and that a greater amount of discretion exists when there are fewer criteria.

Ms. Bronski noted that Council consideration of a CUP has the greatest amount of discretion compared to staff consideration of a different type of permit, which has less discretion and a greater amount of criteria.

Mayor Smith said that a CUP is a reaction to changes in the market. He cited the example of a payday loan operation, which was not anticipated in commercial districts thirty years ago.

Vice Mayor Jones noted that Council Use Permits are utilized to address unique situations on a case-by-case basis. He said that based on his experience in the past seven years, he was comfortable with the existing process.

In response to comments by Councilmember Somers that the Council could consider if certain zoning uses, such as a sexually-oriented business or a tattoo parlor, should be allowed in a C1 or C2 district, Mr. Sheffield stated that when the consolidated draft of the Zoning Code Update is presented to the Council in November, the land use changes would be identified.

Mr. Wesley advised that the Councilmembers were provided with a series of spreadsheets (**see Attachment 3**) that lists the Land Use Classifications, the Present Conditional Use Permit Process, and the Proposed Zoning Code Update, and he requested that the Council provide staff with their comments regarding information listed on the spreadsheets.

Mr. Sheffield responded to questions from Councilmember Higgins by explaining the types of Use Permits that may be required once a determination is made that the proposed project is in the proper zoning district.

Additional discussion ensued relative to the fact that the Council could establish additional criteria for certain permits and transfer the decision making authority to the staff or board level; and that basic requirements and standards should be established.

Vice Mayor Jones noted that the Council has the discretion to determine if the Council Use Permit applies to the individual or the property.

Ms. Spinner stated that a background check would apply to licensing an owner/operator and that a Use Permit relates to a land use issue.

Mayor Smith said he would like to retain the discretion while raising the minimum standards. He expressed support for being proactive regarding the standards for operating a business.

Additional discussion ensued regarding the fact that the Council could identify the uses they propose to change; that the staff could schedule a complete land use presentation to the Council in the future; and that the Council may wish to review the licensure process.

Mayor Smith suggested that staff meet individually with Council members regarding these issues, and he thanked staff for the presentation.

5. Acknowledge receipt of minutes of various boards and committees.

- a. Transportation Advisory Board meeting held July 21, 2009
- b. Economic Development Advisory Board meeting held on August 4, 2009
- c. Community & Neighborhood Services Committee meeting held August 27, 2009

It was moved by Vice Mayor Jones, seconded by Councilmember Somers, that receipt of the above-referenced minutes be acknowledged.

Carried unanimously.

6. Hear reports on meetings and/or conferences attended.

Councilmember Kavanaugh: Rhodes Regional Pool Grand Opening

Councilmember Somers: Ribbon cutting event for a new home at Desert Sands Mobile Home Park funded by a HOME grant.

Firefighters serving at the Texas Roadhouse in order to raise money for charity.

Councilmember Higgins: Saguaro Room opening at the MCC Red Mountain campus.

Vice Mayor Jones: Arizona League of Cities and Towns Conference.

September 11th Mesa Arts Center event with free concerts.

7. Scheduling of meetings and general information.

City Manager Christopher Brady stated that the meeting schedule is as follows:

Monday, September 14, 2009, 5:15 p.m. – Study Session

Monday, September 14, 2009, 5:45 p.m. – Regular Council Meeting

Thursday, September 17, 2009, 7:30 a.m. – Study Session

Thursday, September 17, 2009, 6:00 p.m. – District 2 Building Strong Neighborhoods Event

8. Items from citizens present.

There were no items from citizens present.

9. Convene an Executive Session.

It was moved by Vice Mayor Jones, seconded by Councilmember Somers, that the Council convene an Executive Session at 9:23 a.m.

Carried unanimously.

- a. Discussion or consultation for legal advice with the City Attorney. (A.R.S. §38-431.03A (3)). Discussion or consultation with the City Attorney in order to consider the City's position and instruct the City Attorney regarding the City's position regarding contracts that are the subject of negotiations, in pending or contemplated litigation or in settlement discussions conducted in order to avoid or resolve litigation. (A.R.S. §38-431.03A (4))

1. Waveyard Development Agreement
2. Meet and Confer

At the conclusion of the Executive Session, Mayor Smith reconvened the Study Session at 11:01 a.m. for Council consideration of agenda item 3, with all members present except Councilmember Kavanaugh and Vice Mayor Jones. Mayor Smith excused Councilmember Kavanaugh from the remainder of the Study Session and Vice Mayor Jones returned to the Study Session at 11:03 a.m.

3. Hear a presentation, discuss and provide direction to the City Manager on an extension for the Waveyard Development Agreement.

City Manager Christopher Brady advised that the Waveyard developer submitted a letter (**see Attachment 4**) requesting an extension to the Development Agreement that is scheduled to expire in January of 2010. He said that the development group advised the City that the difficult credit market has significantly impacted the project. Mr. Brady noted that although the Waveyard Development Agreement allows the City Manager the discretion to extend the timeframe, he was seeking the concurrence of the Council to grant the request, which would extend the initial term of the agreement for eighteen months until July 11, 2011, after which the City Manager would be authorized to grant additional extensions based on the developer meeting specific performance measures.

Responding to a request from Councilmember Richins, Mr. Brady confirmed that specific performance measures are tied to the extension including regular updates to the City on the progress of the project and the sharing of information with the community.

At the invitation of Mayor Smith, Richard Mladick, Co-founder of Waveyard Development, LLC, addressed the Council and expressed appreciation for the opportunity to continue working on the project.

Mayor Smith noted that prior to leaving the Study Session, Councilmember Kavanaugh requested that the record reflect the fact that although he opposed the Waveyard project, he accepted the decision of the voters, and he supported the method in which the extension agreement was crafted and the performance measures that are included.

Mayor Smith stated that the consensus of the Council is that the City Manager is directed to authorize an extension to the Waveyard Development Agreement.

10. Adjournment.

Without objection, the Study Session adjourned at 11:08 a.m.

SCOTT SMITH, MAYOR

ATTEST:

LINDA CROCKER, CITY CLERK

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Study Session of the City Council of Mesa, Arizona, held on the 10th day of September, 2009. I further certify that the meeting was duly called and held and that a quorum was present.

LINDA CROCKER, CITY CLERK

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Attachments (4)